HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.2001 of 2006

Dated 4th AUGUST 2006

Between:

N.Nagaraju S/o N. Choudappa, 47 years
President, Nirmala Silk Weavers Coop.Society Ltd.,
ARS No.260, Dharmavaram Town
Anantapur district.

…. Petitioner

And:

A.P.State Weavers Cooperative Society Ltd (APCO)
Rep.by its Vice Chairman & Managing Director,
Narayanaguda, Hyderabad & 3 others

… Respondents

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ORDER:

This writ petition is filed seeking writ of Mandamus declaring the Resolution No.3 dated 27.01.2006 of the 1st respondent co-opting the 4th respondent as Director of the Board of Management of the 1st respondent - Society in the place of the petitioner as highly illegal, arbitrary, unjust and contrary to Section 21(A) of the A.P. Cooperative Societies Act read with Rule 24-A of the A.P. Cooperative Societies Rules 1964.

2. The facts are not in dispute. The petitioner was elected as President of Nirmala Silk Weavers Cooperative Society Limited, Dharmavaram town, Ananthapur District on 29.12.2000 for a period of five years. Thus he was entitled to continue as such till 28.12.2005. While so, the 1st respondent i.e. A.P. State Weavers Cooperative Society Ltd., Hyderabad elected him as one of the Members of the Board of Directors on 2.09.2003 for a period of five years. Thus his term would have been completed by 01.09.2008 as Director of the 1st respondent-Society. While so, the elections to Nirmala Silk Weavers Cooperative Society Limited, which were due in the month of December 2005, were conducted on 20.12.2005 and the petitioner

was re-elected. Therefore, he is automatically entitled to continue as one of the Board of Directors as per the election held on 2.9.2003. While so, the impugned Resolution No.3 dated 27.01.2006 is passed by the 1st respondent-Society, co-opting the 4th respondent as Director of the Board of Management of 1st respondent-Society in the place of the petitioner. According to the petitioner, even before his term as a President of Nirmala Silk Weavers Cooperative Society Limited was completed on 28.12.2005 and on 22.12.2005 itself, he was re-elected to the Primary Society and therefore there is no disqualification attached to him so that the 4th respondent could be co-opted as one of the Directors of the 1st Respondent-Society. In fact, there was no vacancy as such is available as on that date.

3. However, the learned counsel for 4th respondent strenuously contended that neither Section 21(A) nor Rule 24(A) of A.P. Cooperative Societies Act has any relevance to the facts of this case as mentioned by the petitioner. Further, the very writ petition is not maintainable; since 4th respondent was co-opted an effective and alternative remedy available is only by way of raising dispute under Section 61 of the Cooperative Societies Act. He further contended that the Society can either reduce or increase the period and therefore, by passing the impugned resolution, it must be deemed that the period of the petitioner as Member of the Board of Directors has been reduced. Further once election notification was issued for the Primary Society, 45 days before the election, it must be deemed that the petitioner ceased to be the President of the Primary Society. Therefore, he has acquired disqualification for being continued as Director of the Board of Management of the 1st Respondent-Society. Thus the 4th respondent has been co-opted rightly under Bylaw No.16 of the Society. Unless and until there is re-election of the petitioner by the 1st

respondent-Society, to the post of Director after his re-election on 22.12.2005 as President of the Primary Society, he cannot be treated as Member of the Board of Management of the 1st respondent-Society.

4. In the light of the above facts, the only question that falls for consideration is whether the petitioner has acquired any disqualification for being continued as Member of the Board of Directors of the 1st respondent-Society?

5.The term of office of the petitioner as President of the Primary Society was valid up to 28.12.2005; he was re-elected for the 2nd term on 22.12.2005 itself. Thus no disqualification is attached to the petitioner for being Director of the 1st respondent – Society as on 27.01.2006. Further, no provision of law has been brought to the notice of this Court that a President of the Primary Society re-elected is required to be re-elected for being Director of the 1st respondent, though earlier election as Director is for five (5) years.

6. Therefore, the impugned Resolution No.3 dated 27.01.2006 passed by the Board of Management of 1st respondent - Society co-opting 4th respondent as Director of Board of Management in the place of the petitioner is arbitrary, illegal and therefore, the same is liable to be set aside. Accordingly the Resolution No.3 dated 27.01.2006 is set aside. Further it is declared that the petitioner is entitled to continue as Member of the Board of Directors of the 1st respondent-Society till 01.09.2008 as per his original election as Director for a period of five years elected on 2.09.2003. Accordingly, the writ petition is disposed of. No order as to costs.

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C.V. RAMULU, J

Dated: 4th AUGUST 2006

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